

REMARKS

In reply to the Office Action dated June 17, 2004, claims 6-11 are currently under examination in the Application. By the above amendment, claim 6 has been amended. Support for the amendment can be found throughout the specification as filed, for example at page 7, lines 5-9. No new matter has been added. The above amendment is not to be construed as acquiescence to the stated grounds for objection/rejection and is made without prejudice to prosecution of any subject matter modified and/or removed by this amendment in a related divisional, continuation and/or continuation-in-part application.

Applicant wishes to thank the Examiner for acknowledgement of the Information Disclosure Statement filed February 10, 2004.

***Claims Rejections Under 35 U.S.C. § 102(b)***

Claims 6-9 stand rejected as allegedly being anticipated under 35 U.S.C. § 102(b) over PR Newswire (07 December 1998) or Henderson (21 December 1998) as evidenced by Patent No. 5,858,358. In particular, the Action contends that the cited references teach the claimed method for restoration or enhancement of immune function in an immunocompromised or immunosuppressed subject (e.g., subjects with terminal non-Hodgkin's lymphoma). The Action further contends that the '358 patent teaches that the method was well known in the art at the time of filing of the present application.

Applicant respectfully traverses the rejection. Applicant notes that the claims have been amended without prejudice or acquiescence to recite a method for restoring or enhancing immune function in an artificially induced immuno-compromised or immuno-suppressed subject, wherein said restoring or enhancing immune function comprises an increase in neutrophil counts. Applicant submits that the PR Newswire (07 December 1998) and Henderson (21 December 1998) references both refer to a method for treating cancer, not methods for restoring or enhancing immune function. Nowhere in the cited references, including the '358, is it taught or even suggested that the activated T cells may be used in the methods as

presently claimed, particularly a method wherein enhanced immune function comprises an increase in neutrophil counts. Accordingly, Applicant urges that the cited reference do not anticipate the claims. Applicant respectfully requests withdrawal of the rejection.

***Claims Rejections Under 35 U.S.C. § 102(f)***

Claims 6-11 stand rejected under 35 U.S.C. § 102(f) allegedly because the Applicant did not invent the claimed subject matter. In particular, the Action contends that because it is stated in the PR newswire reference that Xcyte founders Carl June and Craig Thompson “invented a process using monoclonal antibodies attached to beads that bind the CD3 and CD28 receptors to provide costimulatory signals to T cells”, that they also must have invented the present invention.

Applicant respectfully traverses the rejection and submits that Carl June and Craig Thompson did not invent a method for restoring immune function in artificially induced immuno-compromised or immuno-suppressed subjects. Drs. June and Thompson undoubtedly invented the above antibodies attached to beads and have used T cells stimulated with them for the treatment of cancer. However, nowhere do these authors teach the presently claimed method for restoring or enhancing immune function in an artificially induced immuno-compromised or immuno-suppressed subject, wherein said restoring or enhancing immune function comprises an increase in neutrophil counts. Applicant hereby submits the Declaration of Dr. Ronald Berenson stating that he alone invented the presently claimed methods.

In view of the above remarks, Applicant submits that the presently named inventor invented the claimed subject matter and respectfully request withdrawal of the rejection under 35 U.S.C. § 102(f).

***Claims Rejections Under 35 U.S.C. § 103(a)***

Claims 10 and 11 stand rejected under 35 U.S.C. § 103(a) as allegedly being obvious over PR Newswire (07 December 1998) or Henderson (21 December 1998) in view of U.S. Patent No. 5,858,358 and U.S. Patent No. 5,861,406. Claims 10 and 11 also stand rejected under 35 U.S.C. § 103(a) as allegedly being obvious over U.S. Patent No. 5,858,358 in view of

U.S. Patent No. 5,861,406. In particular, the Action contends that one of ordinary skill in the art would have been motivated to use the method described in Newswire and of Henderson for the treatment of any type of immunosuppression, including the well-known immunosuppression due to chemotherapy or radiation treatment (as allegedly taught by the '406 patent) or the use of immunosuppressants, given the teachings of the '358 patent.

Applicant traverses the rejection and notes that the claims as amended recite a method for restoring or enhancing immune function in an artificially induced immuno-compromised or immuno-suppressed subject, wherein said restoring or enhancing immune function comprises an increase in neutrophil counts. Applicant submits that the combined primary and secondary references, taken for what they teach as a whole, do not teach or suggest the presently claimed invention. In particular, Applicant submits that the primary references of PR Newswire or Henderson disclose only methods for the treatment of cancer. Neither reference teaches or suggests restoring or enhancing immune function in an artificially induced immuno-compromised or immuno-suppressed subject, particularly wherein said restoring or enhancing immune function comprises an increase in neutrophil counts. The '358 and '406 patents do not overcome this deficiency. As noted above, the '358 patent teaches methods for treating cancer and HIV and the '406 patent merely teaches the use of salts of aminoimidazole carboxamide for the treatment of neoplasms. Neither reference teaches or even suggests a method wherein neutrophil counts are increased. Therefore, Applicant submits that the claimed invention would not have been obvious to the ordinarily skilled artisan at the time of filing. Accordingly, Applicant respectfully requests withdrawal of the rejection.

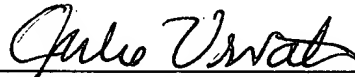
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Reply to Office Action dated June 17, 2004

The Director is authorized to charge any additional fees due by way of this Amendment, or credit any overpayment, to our Deposit Account No. 19-1090.

Applicant respectfully submits that all the claims remaining in the application are now believed allowable. Favorable consideration and a Notice of Allowance are earnestly solicited.

Respectfully submitted,

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